



### Case Summary and Issues

Scott Plothow appeals the trial court's modification of his child support payments to Tristi Plothow, his ex-wife and the mother of their two children. Based on an alleged absence of a substantial and continuing change in circumstances, Scott challenges the trial court's increase of his payments from \$250 per week to \$375 per week. He also challenges the trial court's inclusion of his bonus income in its determination, and alleges that it failed to account for the totality of the circumstances between the parties. Concluding that Tristi met her burden of establishing a substantial and continuing change in circumstances, and that Scott failed to meet the burden of proof as to his other claims, we affirm in part and reverse in part.

### Facts and Procedural History

The marriage between Scott and Tristi was dissolved on March 30, 2005. The couple has two children, ages six and four. As part of the dissolution, Scott was originally ordered to pay child support in the amount of \$250 per week. On May 19, 2005, Tristi filed a petition to modify the child support payments. The trial court held a hearing on December 1, 2005, and issued an order on January 26, 2006. It concluded Tristi had "incurred new child care expenses of \$150.00 per week." Appellant's Appendix at 5. In addition, based on a paycheck stub submitted by Scott, the trial court concluded that Scott's gross weekly income should be increased from \$1,385 to \$1,544 for the purpose of calculating child support. The end result reached by the trial court, retroactive to May 20, 2005, required Scott to make child support payments of \$375 per week. Noting that Scott had accrued an arrearage, it ordered Scott to pay \$400 per week until the arrearage was fully paid, when his payments

would drop to \$375 per week.

On February 24, 2006, Scott filed a motion to correct errors claiming that the trial court erroneously modified his child support payments. On March 16, 2006, the trial court denied Scott's motion. It explicitly stated that the additional \$150 per week cost for childcare "constitute[d] a substantial and continuing change authorizing the modification of support." Id. at 36. Scott filed a notice of appeal on April 12, 2006, and the matter is now before this court.

### Discussion and Decision

#### I. Standard of Review

Modification of a child support order is within the sound discretion of the trial court, and we review for an abuse of that discretion. Brodt v. Lewis, 824 N.E.2d 1288, 1290 (Ind. Ct. App. 2005). This occurs where the trial court's determination is clearly against the logic and effect of the facts and circumstances. Id. We do not reweigh the evidence or reassess the credibility of the witnesses, but rather consider the facts and inferences supporting the judgment. Id. Scott challenges the trial court's modification of his child support payments on three grounds: the absence of a substantial and continuing change in circumstances, the improper inclusion of bonus payments in the trial court's determination of his gross income, and the trial court's failure to consider the totality of the circumstances between the parties.

#### II. Modification of Scott's Child Support Payments

##### A. Change of Circumstances

Indiana Code section 31-16-8-1 sets forth the requirements for modification of child support payments, limiting a change except:

- (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
- (2) upon a showing that:
  - (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and
  - (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

Because the modification at issue took place less than twelve months after the original order was issued, the only avenue available to Tristi was a showing of changed circumstances that rendered the original child support order unreasonable. This burden was hers as the party seeking modification. MacLafferty v. MacLafferty, 829 N.E.2d 938, 940 (Ind. 2005).

Tristi testified that since the original child support calculation, which did not include an amount for work-related childcare expenses, her circumstances had changed, resulting in a new \$150 per week childcare expense. She explained that she had gone from being employed as a nurse “as needed” to being a full time scheduled employee, although this resulted in a slight decrease in pay. Transcript at 7. She also explained that she had to leave for work at 4:30 in the morning, requiring that she have childcare prior to most daycare center’s opening hours. Id. at 13. She testified that prior to the dissolution, Scott “was watching them a lot,” which lessened the need for childcare. Id. at 8. The couple apparently tried to maintain this arrangement, but Scott was unable to follow through due to his hours as a railroad employee. Tristi testified that she would rely on Scott to watch the children, but he would call to cancel because of his job, or when he was watching the children for a few

hours, he sometimes had to leave early for the same reason. Id. at 9.

On cross-examination, Tristi admitted that she made her first childcare payment prior to completing the original child support worksheet that did not include weekly childcare payments. Id. at 20-21. Scott now relies on this testimony to argue that there was actually no change in circumstances meriting modification of his child support payments. We disagree. Sufficient evidence was presented during the hearing to support the trial court's determination that Tristi's circumstances had changed substantially and continuingly, thereby rendering the original support order's lack of childcare costs unreasonable. Scott essentially invites us to reweigh the evidence and witness credibility, which we decline to do.

Scott also argues that the trial court's order modifying his child support payments does not include a finding of changed circumstances.<sup>1</sup> Although not explicitly stating that a significant change had occurred, the trial court noted that Tristi was incurring a new expense for weekly childcare. Previously, during the hearing, the trial court limited its review of the order when Scott agreed with the trial court's assessment that "[w]e clearly don't fall under the second category [of Indiana Code section 31-16-8-1] so you're under the category a [sic] showing of changed circumstances so substantial and continuing as to make the current terms unreasonable." Id. at 26. Despite this clarification by the trial court, Scott's motion to correct errors was largely based on the inapplicable section of the statute. Nevertheless, in its denial of the motion, the trial court expressed that it found a "substantial and continuing

---

<sup>1</sup> We note that the appealed order was not included with the Appellant's Brief. We direct counsel to Indiana Appellate Rule 46(A)(10), with an admonishment for future compliance with the Appellate Rules. In fact, the requirements of other subsections in Rule 46 were neglected in Appellant's Brief, most notably those of subsections (A)(5) and (6).

change authorizing the modification of support.” Appellant’s App. at 36. Thus, it is evident that the trial court’s ordered modification was based on its finding of sufficiently changed circumstances.

#### B. Bonus Income and the Totality of the Circumstances

Scott calls into question the trial court’s inclusion of bonus income when it adjusted his gross income and modified his child support payments. This is a question of fact based on the evidence presented to the trial court, to which we accord deference. See Brodt, 824 N.E.2d at 1290. After the hearing, Scott submitted a paycheck stub and pay details to the trial court that evidenced gross earnings of \$72,583.36, resulting in a gross weekly pay calculation of \$1,544. These documents included handwritten notes regarding bonus income Scott received in the amount of \$8,900.00. Tristi received \$4,600.00 from Scott’s bonus as part of the property settlement agreement. He now contends that the trial court erred by using the entire bonus amount in calculating his gross income even though Tristi received a portion of the bonus under the terms of the property settlement agreement.

In its modification order, the trial court considered Scott’s argument, concluding that “amounts payable to Tristi under the Property Settlement Agreement does [sic] not diminish the amount of income Scott is receiving for child support calculation purposes.” Appellant’s App. at 5. On appeal, Scott argues that “[t]here was no finding by the Court that the irregular income of the Respondent was income that was dependable and reliable on a yearly basis,” and therefore should not have been included. Appellant’s Br. at 8. However, Scott failed to establish that he received irregular income. Other than his claim that it should not be included in the calculations, Scott presented no evidence to the trial court regarding the

bonus income to show that it was irregular income. Likewise, he has not done so now. As such, he has failed to meet his burden of proof in establishing his bonus income as irregular income, and we cannot say the trial court erred when it included this income in its child support calculations.

Even assuming for the sake of argument that Scott's bonus income is irregular income, the trial court did not abuse its discretion. Scott points to Indiana Child Support Guideline 3, particularly comment 2b, for support. His reliance is misplaced. This guideline establishes that a parent's weekly gross income is determined broadly and "includes income from any source" with few exceptions. Ind. Child Support Guideline 3(A)(1). Comment 2 itself begins from the proposition that "[i]n calculating weekly gross income, it is helpful to begin with total income from all sources." Id. Additionally, comment 2b specifically addresses bonuses as "includable in the total income approach taken by the Guidelines." Id. In fact, contrary to Scott's argument that the trial court did not enter a finding when including what he considers irregular income, comment 2b states, "When the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court should express its reasons." Id. (emphasis added). As such, judges and practitioners are encouraged to find ways "to include income that would have benefited the family had it remained intact, but be receptive to deviations where reasons justify them." Id. Scott presented no such reasons here, and the trial court did not abuse its discretion.

Lastly, Scott argues that the trial court erred when it failed to "take into account the disproportionate share of obligations taken on by [Scott] in the Property Settlement Agreement." Appellant's Br. at 8-9. He argues that this establishes that the trial court did

not consider the totality of the circumstances between the parties when it ordered the modification. Again, this is tantamount to requesting that this court reweigh the evidence, which we will not do.

More importantly, Scott's argument seems to suggest that his burden under the settlement agreement should hold sway over the trial court in determining his child support obligation. This is simply wrong. We emphasize that the purpose of child support is the welfare of the children involved, and not the punishment of their father. Decker v. Decker, 829 N.E.2d 77, 79 (Ind. Ct. App. 2005). In Indiana, child support is calculated under the Child Support Guidelines, which "aid in the determination of the amount of child support that should be awarded and provide a measure for calculating each parent's share of the child support." In re The Paternity of G.R.G., 829 N.E.2d 114, 118 (Ind. Ct. App. 2005). To that end, there is a rebuttable presumption that the determination reached through application of the Indiana Child Support Guidelines is correct. Id. Scott has not attempted to rebut this presumption, and has not provided evidence that any or all of his obligations under the settlement agreement preclude his ability to pay \$400 per week in child support until his arrearage is paid off, followed by weekly payments of \$375.

Although we conclude that the trial court properly increased Scott's weekly payments, we do not agree with the trial court's retroactive application of this change to May 20, 2005. Rather, because Tristi knew of the increased childcare expense before completing the original child support worksheet, we believe it would be unfair to impose a substantial arrearage upon Scott for Tristi's failure to timely raise the issue by including it in the original calculations. Thus, we order the modification to be effective from December 1, 2005, the date of the



hearing.

### Conclusion

Sufficient evidence exists to support the trial court's conclusion that Tristi met her burden of showing changed circumstances permitting the modification of Scott's child support payments to include weekly work-related childcare expenses. In addition, the trial court did not commit error when it considered Scott's bonus income in the child support calculation and followed the Indiana Child Support Guidelines in determining the modified amount. Therefore, we affirm the trial court's order granting modification.

Affirmed in part and reversed in part.

BARNES, J., concurs.

SULLIVAN, J., concurs with opinion.

---

IN THE  
COURT OF APPEALS OF INDIANA

---

SCOTT R. PLOTHOW,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 52A02-0604-CV-327
	)	
TRISTI J. PLOTHOW,	)	
	)	
Appellee-Respondent.	)	

---

**SULLIVAN, Judge, concurring**

I concur with my colleagues in all respects except as to their conclusion that Scott failed to establish that his bonus is “irregular income.”

In my view, Scott did not fail to meet a burden of proof upon this issue. Given the fact that the amount in question was a bonus, Guideline 3, Commentary 2b is adequate support for his position. As set forth in Guideline 6, The Commentary is intended to assist the courts in application of the Guidelines. Commentary 2b to Guideline 3 clearly states that bonuses are an illustration of irregular income.

Be that as it may, I must agree with the majority that pursuant to Guideline 3(A)(l), the determination of the fact sensitive issue of what, if any, irregular income is includable in weekly gross income is within the trial court’s discretion.

I therefore concur with Part B of the majority decision, as well as with the decision in all other respects.